

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A28 574 084 - Miami

Date:

In re: ERNESTO RENE TORRES-SANDOVAL

JAN 29 1996

IN DEPORTATION PROCEEDINGS

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MOTION

ON BEHALF OF RESPONDENT: Leandro Marin-Abaunza, Esquire
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ON BEHALF OF SERVICE: David M. Dixon
Chief Appellate Counsel

CHARGE:

Order: Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] -
Entered without inspection

APPLICATION: Reopening

The respondent has filed a motion to reopen to apply for suspension of deportation and a request for a stay of deportation. The motion is supported by an application for the relief sought and by other documents in support of the application. The motion will be granted.

The Immigration and Naturalization Service was sent a copy of the respondent's motion in August of 1995. The Service filed no opposition to the motion. On November 3, 1995, we requested the Service position on the question whether Matter of Barocio, 19 I&N Dec. 255 (BIA 1985), applied in this case, as it appeared that, prior to filing his motion, the respondent had been ordered to appear for deportation. The motion did not make clear whether or not he had appeared. Under Matter of Barocio, generally denial of reopening as a matter of discretion is warranted where an alien fails to appear for a scheduled deportation. However, we questioned whether such a discretionary denial was appropriate in cases such as this, where a Nicaraguan national has been granted work authorization, and has filed a motion to reopen to apply for suspension of deportation pursuant to Service policy to grant work authorization to Nicaraguans applying for suspension of deportation.

The Service replied that it was its position that if a bag and baggage letter is issued after a motion to reopen to apply for suspension of deportation has been filed and served on the Service, Matter of Barocio, *supra*, should not apply. However, if the motion to reopen is filed after the alien is sent the notice

to surrender for deportation, Barocio should be applied. In its reply, the Service also stated that its records show that the respondent did appear for deportation as ordered, and was released on bond pending a decision on the motion to reopen.

Since it is now clear that the respondent did appear for deportation as required, Matter of Barocio, supra, does not in any event apply in this case. We further note that on November 14, 1995, the Office of the General Counsel for the Service submitted a memorandum to this Board outlining its position regarding motions to reopen filed by Nicaraguans. That memorandum states, in pertinent part, that the Service "will not oppose a motion to apply for suspension of deportation if the alien appears to be statutorily eligible for that relief."

In view of the fact that there is no actual opposition to reopening in this case, the motion to reopen will be granted, and the following order will be entered.

ORDER: The motion to reopen is granted, the proceedings are reopened, and the record is remanded to the Immigration Judge for a further hearing consistent with the foregoing decision.



FOR THE BOARD